IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.28415 of 2011

M.Santhi ... Petitioner

Vs

1. The Inspector General
of Registration and the
Chief Revenue Controlling Officer,
120, Santhome High Road,
Chennai - 600 028.

2. The District Revenue Officer,
(Stamps), Coimbatore.

3. The Sub- Registrar,
Sathyamangalam,
Erode District. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 02.11.2011 made in Proceedings No.38933/N2/2011, dated -08-2011 passed by the first respondent, quash the same and consequently direct the respondents to refund the amount of Rs.20,217/- paid on 14.08.2009 with interest at the rate of 2% till the date of payment to the petitioner by considering the petitioner's representations dated 26.04.2011 and 11.08.2011.

For petitioner:Mr.N. Nithyalakshmi for Mr.N.Manokaran

For respondents: Mr.P.P.Purushothaman,
Government Advocate
for RR1 to 3

ORDER

This writ petition has been filed for challenging the order dated 02.11.2011 passed by the first respondent in proceedings No.38933 /N2/2011, dated -08-2011 and consequently direct the respondents to refund the amount of Rs.20,217/- paid by the petitioner on 14.08.2009 with interest at the rate of 2% till the date of payment to the petitioner by considering the petitioner's representations, dated 26.04.2011 and 11.08.2011.

2.It is the case of the petitioner that she purchased an extent of 4389/-sq. ft. in S.F. No.92/2, Rangasamudiram Village, Sathyamangalam Taluk, Erode District from one K.R. Palanisamy by a sale deed dated 14.02.2003 registered as document No.472 of 2003 on the file of the third respondent. It is her case that the entire extent of the property was an agricultural land on the date of purchase and it was not developed as house sites till 2005.

3.It is her case that after her purchase, the second respondent had issued a show cause notice in Form I under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 on the basis of a reference received from the third respondent under Section 47A(1) of the Indian Stamp Act for determination of the market value of the property. According to the petitioner, she submitted her objections to the said Form I notice. However, according to her without considering her objections and without conducting any enquiry, the second respondent issued the order provisionally assessing the market value of the property at Rs.3,55,509/- in Form II under Rule 6 of the Rules, 1968. Subsequently, the second respondent by an order dated 23.09.2005 fixed the land value as Rs.3,55,509/- and demanded from the petitioner the deficit stamp duty of Rs.18,667/- after deducting the stamp duty of Rs.24,000/- paid by the petitioner at the time of registration of the document.

4.Aggrieved by the said order, the petitioner filed an appeal before the first respondent, which was also dismissed on 20.10.2006. According to the petitioner, the respondents have fixed the land value at Rs.100/- per sq. ft. without following the provisions of the Stamp Act and the Rules framed thereunder.

5.Aggrieved by the order dated 20.10.2006 passed by the first respondent, the petitioner preferred an appeal in Civil Miscellaneous Appeal viz., C.M.A. No.2304 of 2007 before this Court. It is the case of the petitioner that during the pendency of the Civil Miscellaneous Appeal, the petitioner paid the deficit Stamp duty and deficit registration fee on 14.08.2009 as detailed hereunder :-

a.Deficit Stamp duty of	Rs. 18,667/-
b. Deficit Registration Fee	Rs. 1,560/-
	Rs.20,217/-

6.According to the petitioner after the receipt of a sum of Rs.20,217/-, the original sale deed dated 14.02.2003 registered as document No.472 of 2003 was released to the petitioner. Thereafter, this Court by its order dated 22.03.2011 in C.M.A. No.2304 of 2007 allowed the appeal filed by the petitioner and passed the following order

> "10. Hence, this Court is of the view that the respondents have not made out the case as against the appellant that the market value of the property has not been truly set forth and they had the reasons to believe so. In such view of the matter, the demand made by the Respondents for higher stamp duty cannot be sustained.
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> 11. In the result, this Civil Miscellaneous Appeal is allowed, setting aside the impugned order of the 1st respondent confirming the order of the 2nd respondent".

7.It is the case of the petitioner that since the appeal viz., C.M.A. No.2304 of 2007 has been allowed by confirming the order dated 20.10.2006 passed by the first respondent and the order dated 23.09.2005 passed by the second respondent has been set aside, she is entitled for the refund of a sum of Rs.20,217/- together with interest, which is the excess amount paid by her as deficit stamp duty and deficit registration fees for the registration of the sale deed dated 14.02.2003. However, by the impugned order dated 02.11.2011, the first respondent has rejected the representation made by the petitioner for refund of the excess amount of Rs.20,217/- on the ground that the first respondent by its order dated 20.10.2006 has confirmed the order dated 23.09.2005 passed by the second respondent. Aggrieved by the impugned order dated 02.11.2011 passed by the first respondent, this writ petition has been filed.

8.Heard Ms.Nithyalakshmi, learned counsel for the petitioner and Mr.P.P.Purushothaman, learned Government Advocate for the respondents.

9.Admittedly, the order dated 20.10.2006 passed by the first respondent was confirmed and the order dated 23.09.2005 passed by the second respondent has been set aside by this Court by its order dated 22.03.2011 passed in CMA No.2304 of 2007.

10.This Court by the aforesaid order has observed that the market value of the property disclosed by the petitioner in the sale deed is the correct one. Therefore, the demand made by the respondent for higher Stamp duty cannot be sustained. The petitioner during the pendency of this Civil Miscellaneous

Appeal had paid the excess stamp duty of Rs.20,217/-, which comprises of a) Deficit Stamp duty of Rs.18,667/- and b. Deficit Registration Fee of Rs.1,560/-, totalling Rs.20,217/- and on such payment has obtained the release of the original sale deed from the respondents. Since the appeal viz., C.M.A. No.2304 of 2007 has been allowed on 22.03.2011 after the payment of the excess amount of Rs.20,217/- by the petitioner, this Court is of the considered view that in view of the allowing of the appeal, the petitioner is entitled for refund of a sum of Rs.20,217/- from the respondents. However, by an erroneous order, by total non application of mind, the first respondent has rejected the request for refund without taking into consideration the order dated 22.03.2011 passed by this Court in C.M.A. No.2304 of 2007.

11.For the foregoing reasons there is merit in this writ petition and the petitioner is entitled for refund of a sum of Rs.20,217/- which was paid by the petitioner under protest towards the excess demand made by the respondents towards a.Deficit Stamp duty of Rs.18,667/- and b. Deficit Registration Fee of Rs.1,560/-,totalling to Rs.20,217/-. However, the petitioner is not entitled for any interest in this proceedings as it is a disputed question of fact.

12.In the result, the third respondent is directed to refund a sum of Rs.20,217/- to the petitioner within a period of eight weeks from the date of receipt of a copy of the order.

13. With the aforesaid direction, the writ petition is disposed of.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Inspector General
of Registration and the
Chief Revenue Controlling Officer,
120, Santhome High Road,
Chennai - 600 028.

2. The District Revenue Officer,
(Stamps), Coimbatore.

3. The Sub- Registrar,
Sathyamangalam,
Erode District.

+1cc to the Government Pleader Sr.106234
+1cc to Mr.N.Manokaran, Advocate Sr.106032

W.P. No.28415 of 2011

srg 29/01/2020